UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

United States of America	§	
	§	
vs.	§	NO: AU:10-CR-00346(1)-SS
	§	
(1) Richard Donald Theye	§	

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

TO: THE HONORABLE SAM SPARKS
           UNITED STATES DISTRICT JUDGE

The Magistrate Judge submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On July 30, 2010, the defendant and counsel appeared before the Magistrate Judge. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

Pursuant to a plea agreement, the defendant plead guilty to: Count Three, Securities and Commodities Fraud in violation of 18 U.S.C. Sec. 1348; and Counts Four through Eleven, Wire Fraud in violation of 18 U.S.C. Sec. 1343.

The Magistrate Judge finds the following:

1.   The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District

Judge;

2.   The defendant fully understands the nature of the charge against him and possible

penalties;

3.   The defendant understands his constitutional and statutory rights, understands that

his constitutional and statutory rights can be waived, and understands the meaning

and effect of the waiver of his constitutional and statutory rights;

4.   The defendant waived his right to appeal or to file a proceeding under 28 U.S.C. §

2255, except that the defendant retained the right to challenge his sentence to the

extent that it is the result of a violation of his constitutional rights based on claims of

ineffective assistance of counsel or prosecutorial misconduct. Further, the defendant

retained the right to appeal the sentence or file a proceeding under 28 U.S.C. § 2255

if the sentence is an upward departure from the advisory sentencing guidelines.

5.   The defendant's plea was made freely and voluntarily;

6.   The defendant is competent to enter this plea of guilty; and

7.   There is a factual basis for this plea.

RECOMMENDATION

The Magistrate Judge **RECOMMENDS** the District Court accept the defendant's

guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of
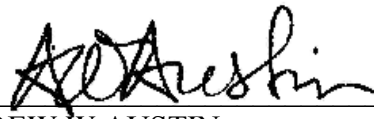
guilt against him.

WARNING

The parties may file objections to this Report and Recommendation. A party filing

objections must specifically identify those findings or recommendations to which objections are

being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within fourteen (14) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report and Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 30th day of July, 2010.

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ANDREW W AUSTIN
U.S. MAGISTRATE JUDGE